IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16769 of 2003

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMNIKLAL RATANSHI GALA & ANR.

Versus

DHARMISTHABEN JAYENDRAKUMAR KUBADIYA & ORS.

Appearance:

1. Special Civil Application No. 16769 of 2003

MR BY MANKAD for Petitioners Nos. 1-2

MR KETAN D SHAH for Respondents Nos. 1-2

Respondent No. 3 - SERVED

MR HS MUNSHAW for Respondents Nos. 4-5

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 10/03/2004

ORAL JUDGEMENT

Heard the learned advocates.

RULE returnable today.

Learned advocates Mr.Shah and Mr.Munshaw waive service of rule on behalf of the respective respondents.

The petitioners - plaintiffs challenge the order dated 27th November, 2003 made by the learned Civil Judge (J.D.), Bhachau - Kachchh below application Ex.33 in Regular Civil Suit No.29/2003.

The plaintiffs are the owners of the land Plots Nos.5 and 6. In the aforesaid Civil Suit the plaintiffs have challenged the action of the defendants Nos.1 and 2 in making construction over the land Plot No.8 for commercial purpose. It is the claim of the plaintiffs that the owner of Plot No.8 had been given permission for non-agricultural use in respect of the said Plot No.8 for residential purpose alone. The aforesaid construction has been made in violation of the said permission. The plaintiffs made application Ex.33 for issuance of witness summons to the District Collector, Kachchh for production of the original permission for non-agricultural use granted on 11th February, 1959. The said Application has been rejected by the learned Judge by impugned order dated 27th November, 2003. Therefore, the present petition.

The defendants have produced a certificate (Mark-25/14) given by the Lakadiya Juth Gram Panchayat on 7th November, 2003 to the effect that the District Collector, Kachchh had, on 11th February, 1959 given permission of non-agricultural use in respect of land Survey No.1180 admeasuring 1-Acre-32-Gunthas. The learned Judge has relied upon the said certificate and has held that the said certificate is sufficient for the purpose of the suit. It has also been held that it is the duty of the plaintiffs to produce the required documents. Accordingly, the application Ex.33 has been rejected.

I am of the view that the learned Judge has rejected the application Ex.33 on non-germane grounds. The original permission for non-agricultural use should be in possession of the defendants Nos.1 and 2. If they do not produce such permission the only source can be the authority which had issued it. There is no justiciable reason for refusing to issue witness summons for production of copy of the permission for non-agricultural use granted in respect of the land in question.

In above view of the matter the present petition is allowed. The impugned order dated 27th November, 2003 made below application Ex.33 in Regular Civil Suit NO.29/2003 is quashed and set aside. The said application Ex.33 is allowed. The learned Civil Judge (J.D.), Bhachau shall issue witness summons upon the District Collector, Kachchh to produce the permission for non-agricultural use granted in respect of the above referred land Revenue Survey No.1180.

Rule is made absolute. The parties shall bear their own costs.

(Ms. R.M.Doshit, J.)

/sakkaf